

A. G. Contract No. KR92-0324-TRN
EDS File: JPA-92-24
City of Scottsdale No.: 920145
Ref. Res. No. 3729
TRACS No.: H 3230 01C
Project: Pima Freeway (101L)
Section: Scottsdale Road -
Bell Road (Interim)

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SCOTTSDALE

THIS AGREEMENT is entered into 02 March, 199³,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by
and through its DEPARTMENT OF TRANSPORTATION (The "State")
and the CITY OF SCOTTSDALE, acting by and through its City
Council (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a
part hereof, resolved to enter into this agreement and has
delegated to the undersigned the authority to execute this
agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes
Section 48-572 and City Charter, Section 3-1 to enter into
this agreement and has by resolution, a copy of which is
attached hereto and made a part hereof, resolved to enter
into this agreement and has authorized the undersigned to
execute this agreement on behalf of the City.

3. The State and the City agree to share equally in
the cost of constructing a four (4) lane interim roadway,
between Scottsdale Road and Bell Road, herein referred to as
"the Project", incorporating the exterior lane and shoulder
of each directional roadway of the ultimate Pima Freeway
101L, "the Freeway".

NO. <u>17404</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>03/02/93</u>
<u>Richard Mahoney</u> Secretary of State
By <u>Vincent J. Greenewald</u>

4. The interim roadway will include drainage features required to convey storm water from the City's proposed drainage system on the north through the Freeway corridor to the City's proposed drainage system on the south. The City's plan contemplates a smaller number of larger culverts, which may result in less expense to the State. The State and the City agree to share equally in the cost savings.

5. The purpose of this agreement is to set forth the responsibilities of each party relative to the obligation of funds, contract bid, selection, administration and maintenance of the Project.

6. The Arizona Department of Transportation (ADOT) is considering the possibility that the Freeway may be constructed as a toll road. This Agreement is not intended to apply to a toll road. Accordingly, the parties respective obligations under this Agreement shall not become operative unless and until such date (the "MAG Determination Date") as the MAG Regional Council formally adopts a resolution stating that no portion of the Freeway (being that portion of Pima Freeway 101L between Scottsdale Road and Bell Road) will be a toll road. MAG's failure to formally adopt a resolution resolving the toll road issue one way or the other on or before May 1, 1993 (the "MAG Decision Outside Date") shall for purposes of the preceding sentence amount to a resolution as of the MAG Decision Outside Date stating that no portion of the Freeway will be a toll road, and this Agreement shall be automatically operative and the Freeway shall not be a toll road.

II. SCOPE OF WORK

1. The State will:

a. Acquire the right of way necessary to construct the Freeway from Scottsdale Road to Bell Road, at the State's approved appraised value. The State will not make use of eminent domain condemnation actions to acquire rights of way required for the construction of the Freeway.

b. Afford the City the opportunity to secure any right of way for the Freeway that the State was unsuccessful in obtaining, and will reimburse the City up to the State's approved appraised value.

c. Upon receipt from the City of a completed hydrology study, an acceptable conceptual off-site drainage system design and \$1.8 million, design the Project described herein.

d. Prepare an engineer's estimate to determine the estimated cost of the Project and the funds to be deposited by the City.

e. Prepare an engineer's estimate to determine the cost difference between the Freeway drainage system required for the State's proposed "pass through" system of numerous small drainage culverts under the Freeway vs. the system required to be compatible with the City's proposed drainage plan. This estimate will be based on the revised hydrology as determined in the current Flood Insurance Study. The lower cost system shall be used except that, in the event the "pass through" system is found to be the lower cost system, the City may elect to choose the other system by agreeing to pay the difference in cost above the "pass through" system. In any event, the City shall pay the entire cost of any additional right of way required for the non-"pass through" system.

f. Prepare an engineer's estimate of the cost of any additional Freeway right of way required to accommodate the City's proposed drainage system.

g. Invoice the City \$1.8 million upon the MAG Determination Date. Said funds shall be deposited with the Office of the State Treasurer in the name of the City and the State (Department of Transportation). Interest earnings accruing to this account shall belong to the City, less any administrative charges. Interest shall only accrue up to the time the roadway, construction contract is awarded, at which time, said funds shall be disbursed for construction by a representative of the State, authorized by the State Engineer.

Should the Project be canceled by the City, said funds will be retained to cover design costs incurred by the State prior to cancellation; any remaining funds will be remitted to the City. Should the Project be canceled by the State, said funds and interest shall be disbursed to the City.

h. Prior to advertisement for bids, invoice the City one-half of the Project construction cost, less the \$1.8 million deposit referenced above

i. Upon receipt of funds from the City and commencement of the City's construction of its drainage system, advertise for bids and award one or more construction contracts for the Project.

j. Upon award of the State's construction contract, using the contractor's unit bid prices and including 12% for construction engineering and contingencies, compile a detailed accounting to determine any adjustments to the City's funds received prior to award. Invoice or remit payment to the City accordingly.

k. Administer the Project and make all payments to the contractor. Be responsible for any contractor claims and change orders attributable to State's portion of the Project.

l. Upon completion of the Project, maintain the roadway and drainage facilities within the State's right of way.

2. The City will:

a. Design a drainage system upstream and downstream of the Freeway alignment to minimize the number of drainage crossing of the Freeway facility and provide protection for the Freeway and immediate adjacent properties for up to and including the 100-year, 24-hour storm volume based on the revised hydrology as determined in the current Flood Insurance Study. Forward completed hydrology studies and an acceptable conceptual design to the State prior to two months after the MAG Determination Date for concurrence by the State.

b. Remit \$1.8 million on or prior to thirty (30) days after the MAG Determination Date. Said funds shall be deposited with the Office of the State Treasurer and all interest earnings accruing to this account shall belong to the City, less any administrative charges.

c. Reimburse the State for any additional design costs incurred by the State as a result of modifications or delays which are attributable to the City.

d. If necessary, exercise its power of condemnation to acquire right of way for the Freeway, if the State is unsuccessful in acquiring said right of way at the State's approved appraised value.

e. Be responsible for any difference between the State's approved appraised value and the final condemnation costs.

f. Begin construction of the City's drainage system as described herein prior to advertisement for bids on the Project.

g. Upon receipt of an invoice from the State, remit one-half of the Project construction cost, less the \$1.8 million deposit referenced above.

h. Upon receipt of a detailed accounting, using the contractor's unit bid prices and including 12% for construction engineering and contingencies, reimburse the State, if necessary, for the City's adjusted participation in the cost of the construction of the Project and the drainage cost difference.

i. Reimburse the State for any additional construction costs which are incurred by the State as a result of modifications or delays which are attributable to the City.

j. Upon completion of the Project, maintain the traffic signals at the Scottsdale Road, Hayden Road and Pima Road intersections with the interim roadway and all of the City's drainage system outside the State's right of way.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be canceled at any time prior to the commencement of construction, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

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Arizona Department of Transportation
Engineering Consultants Services
Mail Drop 616E, Room 222E
205 South 17 Avenue
Phoenix, AZ 85007

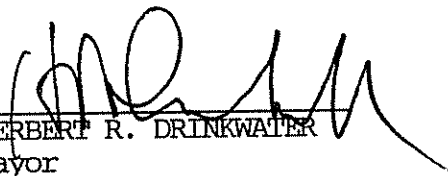
City of Scottsdale
City Manager
3939 Civic Center Boulevard
Scottsdale, AZ 85251

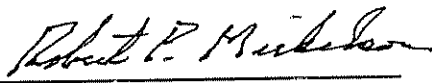
7. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF SCOTTSDALE

STATE OF ARIZONA
Department of Transportation

By 
HERBERT R. DRINKWATER
Mayor

By 
ROBERT P. MICKELSON, P.E.
Deputy State Engineer

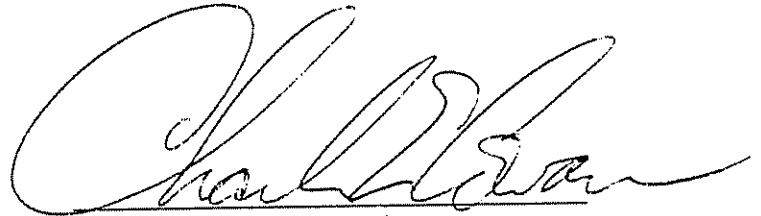
Attest

By 
City Clerk

RESOLUTION

BE IT RESOLVED on this 30th day of January 1992, that I, CHARLES E. COWAN, as Director of the Arizona Department of Transportation, have determined that it is in the best interest of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Scottsdale, for the purpose of defining certain responsibilities for the construction, maintenance and reimbursement of an interim roadway, to ultimately become the Pima Freeway (101L) between Frank Lloyd Wright Boulevard and Shea Boulevard.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

A handwritten signature in black ink, appearing to read 'Charles E. Cowan', written over a horizontal line.

CHARLES E. COWAN, Director
Arizona Department of
Transportation

RESOLUTION NO. 3729

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND THE STATE OF ARIZONA, PROVIDING FOR THE DESIGN, FUNDING AND FINANCING OF AN INTERIM ROADWAY ALONG THE ALIGNMENT OF THE FUTURE OUTER LOOP FREEWAY; AND EXPRESSING OFFICIAL INTENT REGARDING CERTAIN EXPENDITURES TO BE REIMBURSED FROM PROCEEDS OF DEBT.

WHEREAS, ADOT has approved the construction of a freeway (the "Freeway") which will, among other things, include a segment commencing east of Scottsdale Airport at Bell Road and then proceeding in a more or less northwesterly direction to Scottsdale Road (the "Freeway"); and

WHEREAS, the Freeway is not scheduled to be built for several years; and

WHEREAS, ADOT and the City have reached a tentative agreement whereby interim improvements can be made to the Freeway to allow traffic to use the Freeway prior to its eventual completion; and

WHEREAS, such agreement is to be evidenced by an intergovernmental agreement requiring ADOT to build the interim improvements to the Freeway and requiring the City to pay an amount not to exceed \$11,000,000 constituting the City's share of funding for the interim improvements; and

WHEREAS, the City reasonably expects to reimburse itself for its share of the interim improvements by incurring debt; and

WHEREAS, on or about April 6, 1992 the City Council of the City of Scottsdale adopted Resolution No. 3593 authorizing the appropriate City officials to enter into Intergovernmental Agreement No. 920025 with ADOT to build the interim improvements; and

WHEREAS, ADOT has declined to execute Intergovernmental Agreement No. 920025;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale that:

Section 1. The appropriate City officials be instructed not to enter into Intergovernmental Agreement No. 920025.

Section 2. The appropriate City officials be authorized instead to enter into Intergovernmental Agreement No. 920145 between the State of Arizona and the City of Scottsdale providing for the design, funding and construction of an interim roadway along the alignment of the future Outer Loop Freeway from approximately the intersection of Bell Road and Pima Road to a point on Scottsdale Road approximately 100 feet north of Union Hills Boulevard.

Resolution No. 3729
December 14, 1992
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Section 3. (a) The City reasonably expects to reimburse its share of the interim improvements with proceeds of debt to be incurred by the City.

(b) The maximum principal amount of debt expected to be issued for reimbursement of its share of the interim improvements is \$11,000,000.

(c) This Resolution is a declaration of official intent under Treasury Regulation Section 1.103-18.

(d) The City will comply with the applicable State of Arizona and local law governing the public availability of records relating to its official acts with respect to this Resolution.

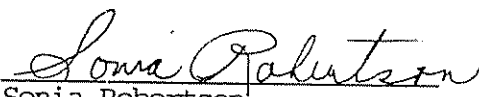
PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 14th day of December, 1992.

CITY OF SCOTTSDALE, a municipal
corporation

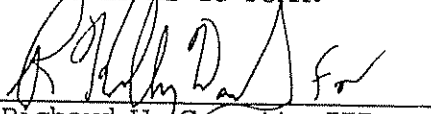
By:


Herbert R. Drinkwater, Mayor

ATTEST:


Sonia Robertson
City Clerk

APPROVED AS TO FORM:

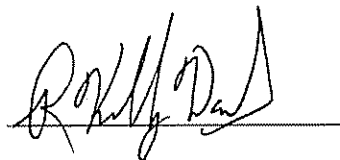

Richard W. Garnett, III
City Attorney

JPA 92-24

APPROVAL OF THE SCOTTSDALE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF SCOTTSDALE, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 10th day of December, 1992.



City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS
ATTORNEY GENERAL

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR92-0324-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 25th day of February, 1993.

GRANT WOODS
Attorney General

A handwritten signature in cursive script, appearing to read "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

7969G/5